

OFFICIAL GAZETTE

GOVERNMENT OF GOA

SUPPLEMENT

GOVERNMENT OF GOA

Department of Labour

Order

No. CL/Pub-Awards/98/9138

The following Award dated 9-2-1998 in Reference No. IT/46/91 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 11th June, 1998.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/46/91

Shri Anthonio R. Dias
and another,
Rep. by the Secretary,
Goa Trade & Commercial
Workers Union,
Velho Building, 2nd Floor,
Panaji-Goa.

— Workmen/Party I

V/s

M/s Zuari Agro Chemicals
Employees Co-operative Society
Limited, Zuarinagar Goa. — Employer/Party II

Workmen/Party I represented by Adv. Shri R. D. Mangueskar

Employers/Party II represented by Adv. Shri G. K. ...

Dated: 9-2-1998.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Goa by order bearing No. 28/35/91-LAB dated 22-10-1991 has referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s Zuari Agro Chemicals Employees Society Limited, Zuarinagar Goa in terminating the services of S/Shri Anthonio R. Dias and Ventero D'Souza with effect from 1-6-90 is legal and justified?"

If not, to what relief the workmen are entitled?"

2. On receipt of the reference, a case was registered under No. IT/46/91 and registered AD notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The workman/party I for short (Union) filed Statement of Claim which is at Exb. 3. The facts of the case in brief as pleaded by the Union are that the Employer/Party II for short (Employer) was running the provisions store wherein various consumer products are sold and it is situated at Zuarinagar, near the Post Office. That the workmen Shri Ventero D'Souza and Shri Anthonio R. Dias were employed by the Employer on

1-1-85 and they were working as helpers on the vehicles used by the employer for transportation of the consumer products. That the workmen used to load the purchased goods in the pick-ups/mini buses and thereafter unload them at the stores at Zuarinagar and they were also travelling in the said vehicles whenever delivery of the goods were to be made at Margao, Mapusa, Panjim etc. That the workmen were paid Rs. 600/- p.m. and they were also entitled to overtime wages whenever they work overtime. That, somewhere in the month of April, 1990, the Employer sold their pick-ups and started engaging the vehicles of another transport company, namely, G. M. Bhandare Transport. That the employer terminated the services of the workmen w.e.f. 1-6-1990. The Union contended that the employer could have accommodated the said workmen in their employment as plenty of work is available in the stores of the employer. The Union therefore, contended that the action of the employer in terminating the services of the workmen is illegal and unjustified and hence, they are liable to be reinstated in service with full back wages and other benefits.

3. The employer stated that the workmen were not their employees and therefore, no industrial dispute subsist. The employer also stated that no demand whatsoever was made on the employer for any reliefs and since the contractor has not been made the party to the reference, the reference is null and void. The Employer stated that the workmen were engaged by the Contractor for operating his tempo. The employer stated that very often, the contractor committed default in payment of wages to his employees as well as in deducting the statutory dues for the purpose of remitting them to the authorities and as the Employer could be ultimately held responsible and be subjected to penal consequences for such default, the Employer agreed to the suggestion of the contractor that in view to avoid default, wages shall be paid to the workmen by the employer in the presence of the contractor's representative and a copy of the receipt obtained for such payment would be deposited with the Contractor. The employer stated that the contractor's service for transporting goods on behalf of the Employer were discontinued from 31-5-91 and the said services were assigned to another Contractor M/s G. M. Bhandare. The employer stated that as a result of discontinuation of the Contract with M/s Zuari Agro Chemicals Ltd., the employer was compelled to terminate the contract with their contractor and consequently, the employer ceased to have any relationship with the contractor M/s Roque D'Souza and his labourers or staff. The employer stated that the dispute if any, ought to have been raised by the Union on behalf of the workmen against the contractor Mr. Roque D'Souza and not with the Employer. The employer denied that the workmen were working on the vehicles owned by the Employer. The employer denied that they committed any unfair labour practice or that they committed any acts which is illegal and unjustified. The employer, therefore, stated that the workmen are not entitled to any reliefs and the reference is liable to be rejected. The Union thereafter filed Rejoinder which is at Exb. 5.

4. On the pleadings of the parties, issues were framed at Exb.6 and the case was fixed for the evidence of the Union. On 26-11-97, when the case was fixed for the hearing, Adv. Shri Raju Mangueshkar, representing the Union and Adv. Shri G.K. Sardesai representing the employer submitted that the dispute between the parties was duly settled and they filed the terms of settlement dated 26-11-97 alongwith an application dated 26-11-97 Exb.11, praying that Consent Award be passed in terms of the settlement dated 26-11-97 Exb.12. I have gone through the terms of the settlement and I am satisfied that the said terms are certainly in the interest of the workmen. I therefore, accept the submissions made by the parties and pass the consent award in terms of the settlement dated 26-11-97 Exb. 12.

ORDER

1. The Employer, M/s Zuari Agro Chemicals Coop. Society Ltd., agrees to pay a sum of Rs. 18,000/- (Rupees eighteen thousand only) towards full and final settlement of all the legal dues of Shri Anthonio R. Dias and Shri Ventero D'Souza and that the Employee/ Employer relationship between them has come to an end. The Union further agrees that the workmen have no claim of whatsoever nature against the Employer/ Party No. II.
2. The employer agrees to pay the said amount by drawing two cheques of Rs.9,000/- (Rupees nine thousand only) each on the name of the workmen and the said cheques will be handed over to the Union alongwith individual receipts. The Union agrees to take acknowledgement of both the workmen having received the cheques on the receipts.
3. Both the parties agree to submit a joint application before the Industrial Tribunal, Panaji praying for their consent award on the above terms and conditions.
4. It is also agreed by the Union that in the event of any dispute/claim application, etc. in any Court/Tribunal/Office, etc. if filed by the workmen/Union that the same shall stand as withdrawn in view of this settlement.

No order as to cost.

Inform the Government accordingly.

Sd/-
(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/98/9140

The following Award dated 15-1-1998 in Reference No. IT/22/90 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 11th June, 1998.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/23/90

Shri Pedro F. X. Gomes
& 10 Others,
Rep. by the General
Secretary,
Goa Trade & Commercial
Workers Union,
Velho Building, Panaji Workmen/Party I

v/s

M/s Sardessai Engineering
Works, Naguesh Bhawan,
Cortalim Goa. Employer/ Party II

Workmen/Party I represented by Adv. Shri R. Mangueshkar

Employer/Party II represented by Adv. Shri P. J. Kamat

Dated:-15-1-98.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Government of Goa, by order No. 28/25/90-LAB dated June 12, 1990 referred the following dispute for adjudication to this Tribunal.

"Whether the action of the management of M/s Sardessai Engineering Works, Cortalim, in retrenching the services of the following 11 workmen w.e.f. 27-11-1989 is legal and justified ?

1. Shri Pedro Francisco Xavier Gomes, Pump Operator
2. Shri Bhalchandra Naik, Cutter/Fitter
3. Shri Agostinho Andrade, Welder
4. Shri John Carvalho, Welder
5. Shri Jose Vaz, Turner
6. Shri Kistodio Costa, Helper
7. Shri Philip Mendes, Labourer
8. Shri Channama Gulbalvaddi, Cheping Pointing Labourer
9. Shri Ganga Gamdruli, —do—
10. Shri Shantavva Nadar, —do—
11. Shri Renuka S. —do—

If not, to what relief the above workmen are entitled ?"

2. On receipt of the reference, a case was registered under No. IT/23/90 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Workmen/Party I (For short "Union") filed its Statement of Claim which is at Exb.2. The facts of the case in brief as pleaded by the Union are that the Employer/Party II (For short "Employer") is a partnership firm and has its workshop of repairing and building of barges at Cortalim, South Goa. That the Employer employs about 60 to 70 workers during the seasonal work and the 11 workmen named in the reference are the permanent workers of the Employer. The workmen named in the reference (For short "Workmen") on an average have put in 4 to 12 years of service and were paid wages from Rs. 14/- to Rs 20/- per day. That the workmen are designated as welders, pump operators, cutters, helpers, labourers etc. That on 1-7-89, the workers became the members of the Union namely the Goa, Trade and Commercial Workers Union. That on joining the Union, the employer started harassing and victimising the workers and one of the worker who was working as a Welder was dismissed from service without being issued a showcause notice to him. That by letter dated 1-7-89, the Union raised a Charter of Demands on the employer and since there was no response from the employer for settling the demands, an Industrial Dispute was raised before the Dy. Labour Commissioner, Margao. That on raising the demands, the employer continued harassing the workers and the workmen were removed from service and also reduced wages of the workers only to harass them and subsequently forced them to resign from the Union. That the Employer took the stand that the workmen who were retrenched were employed through one Contractor by name Shri Agostinho Andrade and when the Deputy Labour Commissioner, Margao, requested the office of the Labour Inspector, Vasco to inspect the establishment of the employer, the employer was not in a position to produce any agreement to show that the said retrenched workmen were the workers of the Contractor. That the employer recruited new workers in place of the workmen and therefore, the Union by letter dated 13-6-90 requested the Employer not to employ new workers in place of the workmen and further requested to re-employ the said workmen immediately. That the management of

the employer retrenched the workmen with a view to victimise them for becoming the members of the Union namely, the Goa Trade and Commercial Workers Union. That the employer is having enough work in its yard at Cortalim and therefore, the question of retrenching the workmen does not arise. The Union contended that the action of the employer in retrenching the workmen is by way of unfair labour practice and made with a view to victimise the workmen. The union contended that since the action of the employer in retrenching/ terminating the services of the workmen and recruiting new workmen in their place is illegal and unjustified, the workmen are liable to reinstatement in service with full back wages and other consequential benefits.

3. The employer filed Written Statement which is a Exb.3. The employer stated that the reference is not maintainable as it did not employ the concerned workmen and that they were employed by the Contractor, Mr. Agostinho Andrade. The employer admitted that it is a registered partnership firm and carries on the business of repairing barges at its yard situated at Cortalim. The employer stated that since the work is purely of intermittent nature, the said work is being carried out through the contractor from time to time and the Contractor in turn engages its own labourers to get the work done and the payment of the wages of the workers employed by the Contractor are paid by him. The employer stated that Mr. Agostinho Andrade was one of such last contractor who was entrusted with the specific job and he had employed the workmen for getting the job/work done which was completed on or about 27-11-89 and since there was no further work to be entrusted to him, the contract was terminated with instructions to settle all the legal dues of the workmen. The employer stated that the said contractor did not settle the legal dues of the workmen and therefore, being the principal employer, the employer decided to pay all the dues of the workmen on behalf of the said contractor and in pursuance to the said decision, sent letters dated 27-11-89 to each of the workmen, wherein a demand draft drawn on State Bank of India, Vasco, was enclosed towards his dues. The Employer stated that it engaged one Contractor by name Shri Yencappa Gollar with instructions to commence the repair work from 1-7-90 and he was further instructed that preference should be given to the workers who had worked earlier and that said Mr. Gollar sent individual letters to the workmen on 16-6-90 offering employment to them. The Employer stated that except one Mr. Jeo Vaz, the other workmen refused to accept the said letters and therefore, the said letter was sent by registered A/D post and on receipt of the said letter, the workmen by reply dated 25-6-90 refused to work under Mr. Gollar. The Employer stated that since the workmen refused to work under Mr. Gollar, fresh labourers were engaged by Mr. Gollar so as to complete the repair work. The employer stated that since the workmen have refused re-employment offered by Mr. Gollar, the Contractor, the workmen are not entitled for re-employment and therefore, the present dispute does not survive. The employer admitted that the Union

served Charter of Demands dated 1-7-89 on the Employer, but denied that the Employer resorted harassment to the workers or victimise them. The Employer stated that since the workmen were not the direct workmen of the Employer, no direct employment can be given to the said workmen by the Employer. The employer therefore contended that the reference is liable to be dismissed and no relief can be granted to the workmen. The union thereafter filed rejoinder which is at Exb. 4. On the pleadings of the parties, issues were framed at Exb. 5 and the evidence of the Union was partly recorded. On 5-1-98, when the case was fixed for further evidence of the Union, Adv. Shri R. Mangueshkar, representing the Union and who is also the General Secretary of the Union alongwith Adv. Shri P. J. Kamat, representing the Employer. They submitted that the dispute between the parties was settled and they filed terms of settlement duly signed by the parties alongwith an application praying that Consent Award be passed in terms of the said settlement. I have through the said terms of settlement filed by the parties and I am satisfied that the terms are certainly in the interest of the workmen. I therefore, accept the submissions made by the parties and pass the consent Award in terms of the settlement dated 5-1-98 Exb. 42.

ORDER

1. It is agreed between the parties that the Company shall pay to the workmen whose names are given in Annexure 'A' to this settlement, the amount mentioned against their names in full and final settlement of all their legal dues arising out of their retrenchment by the Contractor.
2. It is agreed between the parties that on account of the above settlement and in view of the fact that none of the said workers are in employment of the Party II now, the Charter of Demands raised and pending before this Tribunal is not pressed and no dispute award be prayed from the Hon'ble Tribunal.
3. It is agreed between the parties that the workmen and the Union do not press for reinstatement of the workmen with the Company and their dispute is fully settled.
4. It is agreed and declared that the amount payable by the Company to the workers in the manner hereinabove provided for are in full and final settlement and satisfaction of all claims of the workers against the Company including claims for compensation for loss of office or otherwise howsoever.
5. It is agreed between the parties that in view of this settlement, the dispute in reference No. IT/22/90 and IT/23/90 are fully settled and an Award in terms of this settlement shall be prayed.
6. It is agreed between the parties that the amount payable shall be paid to the workers on or before 16-1-1988.

ANNEXURE 'A'

Sr. No.	Name of the Worker	Date of Appointment	Years of Service	Wages per day	Notice Pay	R. C.	Gratuity	Exgratia	Total
1.	Augustin Andrade	1985	5	18/-	468/-	1350/-	1350/-	832/-	4,000/-
2.	Bhalchandra Naik	1985	5	24/-	624/-	1800/-	1800/-	776/-	5,000/-
3.	John Carvalho	1986	4	16/-	416/-	960/-	—	624/-	2,000/-
4.	Oustodio Costa	1987	3	13/-	338/-	565/-	—	577/-	1,500/-
5.	Pedro Francis X. Gomes	1984	6	16/-	416/-	1440/-	1440/-	704/-	4,000/-
6.	Philip Mendes	1986	4	30/-	780/-	1800/-	—	920/-	3,500/-
7.	Chennamma Wadali	1984	6	14/-	364/-	1260/-	1260/-	616/-	3,500/-
8.	Ganga Gandholi	1986	4	14/-	364/-	840/-	—	546/-	1,750/-
9.	Shantavva Nadar	1987	3	13/-	338/-	585/-	—	577/-	1,500/-
10.	Renuka Shinde	1987	3	13/-	338/-	585/-	—	577/-	1,500/-
11.	Joe Vaz	1986	4	18/-	468/-	1080/-	—	452/-	2,000/-

No order as to cost.

Inform the Government accordingly about the passing of the Award.

Sd/-
(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/98/9631

The following Award dated 25-6-1998 in Reference No. IT/52/97 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Sections 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.
R. S. Mardolker, Ex-Officio Joint Secretary (Labour).
Panaji, 13th July, 1998.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/52/97

Shri Dilip Tukaram Kerkar,
Deulwada, Korgao,
Pernem Goa.

—Workman/Party I

V/s

M/s Goa Antibiotics & Pharma-
ceuticals Ltd., Tuem,
Pernem Goa.

— Employer/Party II

Workman/Party I represented by Shri Subhash Naik.

Employer/Party II represented by Adv. Shri P. J. Kamat.

Dated:- 25-6-98.

AWARD

In exercise of the powers conferred by clause (b) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Government of Goa by order No. IRM/CON/(23)/95/4308 dated 11th August, 1997 referred the following dispute for adjudication to this Tribunal.

"Whether the action of M/s Goa Antibiotics & Pharmaceuticals Limited, Tuem, Pernem Goa, in terminating the services of Shri Dilip T. Kerkar, Accounts Assistant, w.e.f. 1-12-94 is legal and justified?"

If not, to what relief the workman is entitled?"

2. On receipt of the reference, a case was registered under No. IT/52/97 and registered A/D notices were issued to the parties. In pursuance to the said notice, the parties put in their appearance. The workman / Party I (For short "workman") filed his statement of claim which is at Exb.5. The facts of the case in brief as pleaded by the workman are that he was employed with the Employer/Party II (For short "Employer") as an Accounts Assistant since 20-7-89. That in the year

1994, the employer issued a chargesheet dated 16-4-94 to the workman alleging that he had remained absent in the month of February and March 1994 and that he was asked to obtain xerox copies of some documents and he did not do so. That the employer held an enquiry into the charges levelled against the workman and in the said enquiry, Adv. Shri P. J. Kamat represented the management whereas the workman was not represented by any person. That, after completing the enquiry, the Inquiry Officer submitted his findings on 3-8-94 holding the workman guilty of the charges and on receipt of the findings from the Inquiry Officer, a show cause notice dated 12-8-94 was issued to the workman which he replied by letter dated 22-8-94. That the employer thereafter, dismissed the workman from service by letter dated 30-11-94 without notice and with immediate effect. The workman contended that the enquiry was held by the inquiry officer in violation of the principles of natural justice and the findings given by the inquiry officer were perverse. The workman also contended that the punishment of dismissal imposed on him is too severe and highly unjust. The workman claimed that he is entitled to be reinstated in service with full back and continuity in service as termination of his service is illegal and unjustified.

2. The employer filed written statement which is at Exb.6. The employer stated that it has its certified standing orders which govern the service conditions of the workmen of the employer. The employer stated that the workman was employed as an Accounts Assistant w.e.f. 20-7-97 and was stationed at the factory at Tuem and that he was not punctual in his attendance and was a habitual absentee. The employer stated that the workman was instructed to make xerox copies of some important documents on 25-3-94 and that he took the originals of some documents with him on 23-9-94 but neither took the xerox copies nor informed his departmental head about his inability to take the xerox copies and further that he handed over the original documents to the security in charge and remained absent from duties on 23-5-95. The employer stated that earlier also, the workman had remained absent during the month of February and March 1994 and he was issued a showcause notice dated 26-3-94 calling for his explanation. Since his explanation was not found satisfactory, a chargesheet dated 16-4-94 was issued to the workman and subsequently, an enquiry was held. The employer stated that the workman duly participated in the enquiry in person and he was given full opportunity to defend himself in the enquiry. The employer stated that after the completion of the enquiry, the Inquiry Officer submitted his findings on 3-8-94 holding the workman guilty of charges levelled against him and on perusing the proceedings of the enquiry, the findings of the inquiry officer and the past record of the workman, the employer proposed to award punishment of dismissal from service without notice or salary in lieu of notice and accordingly, a show cause notice dated 12-8-94 was issued to the

workman. The employer stated that the explanation given by the workman to the show cause notice was not found satisfactory and therefore, the employer dismissed the workman from service from 30-11-94. The employer denied that the enquiry was held in violation of the principles of natural justice or that the findings of the Inquiry Officer are perverse. The employer denied that the workman is entitled to reinstatement in service with full back wages as claimed by him. The employer stated that dismissal of the workman from service is legal and justified.

3. On the pleadings of the parties, issues were framed at Ex.6 and thereafter, the case was fixed for the evidence of the workman on preliminary issues. However, before the evidence of the workman was recorded, the parties submitted that the dispute between them was amicably settled and they filed terms of settlement dated 21-4-98 duly signed by the parties. The workman and the employer also filed an application dated 21-4-98 Exb. 9 praying that consent award be passed in terms of the settlement dated 21-4-98 Exb. 10. I have gone through the terms of the settlement and I am satisfied that the said terms are certainly in the interest of the workman. I therefore accept the submissions made by the parties and pass the consent award in terms of the settlement dated 21-4-98 Exb. 10.

ORDER

1. It is agreed between the Company and the workman that the workman is properly relieved from the services w.e.f. 1-12-94.
2. It is agreed between the parties that the company shall pay an amount of Rs. 13,175/- (Rupees thirteen thousand one hundred and seventy five only) to the workman Mr. Kerkar in full and final settlement of all his claims against the company.
3. It is agreed between the parties that the workman has no claim of whatsoever nature against the company.
4. It is agreed between the parties that in view of the payment of amount agreed in clause (2) above the workman does not press his claim for reinstatement with full back wages and continuity in service and that he is properly relieved.
5. It is agreed between the parties that an application be made before the Hon'ble Tribunal, Panaji in Reference No. IT/52/97 for consent award in terms above.

6. It is agreed between the parties that the amount agreed in clause (2) above shall be paid within 7 days of the signing of this settlement.

No order as to costs.

Inform the Government accordingly.

Sd/-
(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/98/9732

The following Award dated 6-7-1998 in Reference No. IT/24/98 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 15th July, 1998.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/24/98.

Shri Sudesh Kerkar,
Borbhat, Taleigao,
Ilhas Goa.

—Workman/Party I

V/s

M/s LIC Housing Finance
Limited,
Neurekar House, IInd Floor,
M. G. Road, Behind Hotel
Mandovi, Panaji - Goa.

— Employer/Party II

Workman/Party I — Absent

Employer/Party II — Absent

Dated:- 6-7-98.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes

Act, 1947, the Government of Goa by order No. IRM/CON/(50)/96/8225 dated 6th April, 1998 referred the following dispute for adjudication to this Tribunal.

"Whether the action of M/s LIC Housing Finance Limited, Panaji Goa, in terminating the services of Shri Sudesh Kerkar, messenger, with effect from 25-6-1995 is legal and justified?"

If not, to what relief the workman is entitled?"

2. On receipt of the reference a case was registered under No. IT/24/98 and registered A/D notice was issued to the party I requiring him to attend the hearing fixed on 5-5-98 at 10.30 a. m. The party II was served with the notice of hearing fixed on 5-5-98 at 10.30 a.m. by hand delivery. On 5-5-98, the Area Manager of the Employer/Party II (For short "Employer") attended the hearing on behalf of the employer. However, the A/D card in respect of the registered A/D notice sent to the workman/Party I (For short "Workman") was not received and also none remained present on behalf of the workman. Therefore, a fresh registered A/D notice was ordered to be issued to the workman and the case A/D was adjourned to 4-6-98 at 10.30 a.m. for filing of the Statement of Claim by the workman. Accordingly, fresh registered A/D notice was issued to the workman requiring him to attend the hearing fixed on 4-6-98 at 10.30 a. m. and the workman was duly served with the said notice. On 4-6-98, neither the workman nor the employer remained present and therefore, one more opportunity was given to the workman to file his Statement of Claim on 19-6-98 at 10.30 a.m. On this date also, none appeared for the workman as well as for the employer and consequently, no Statement of Claim was filed on behalf of the workman.

3. The reference of the dispute has been made by the Government at the instance of the workman since he challenged the action of the employer in terminating his services w.e.f. 25-6-95. The Allahabad High Court in the case of V. K. Raj Industries V/s Labour Court and others reported in 1981 (29) FLR 194 has held that the proceedings before the Industrial Court are judicial in nature even though the Indian Evidence Act is not applicable to the proceedings before the Industrial Court but the principles underlying the said Act are applicable. The High Court has held that it is well settled law that if the party challenges the validity of an order, the burden lies upon him to prove the legality of the order and if no evidence is produced, the party invoking the jurisdiction must fail. The High Court has further held that if the workman fails to appear or to file written Statement or to produce evidence, the dispute referred by the Government cannot be answered in favour of the workman and he would not be entitled to any reliefs. The Bombay Court, Panaji Bench, in the case of V. N. S. Engineering Services V/s Industrial Tribunal, Goa, Daman & Diu and another reported in FJR Vol. 71 at page 393 has held

that the obligation to lead evidence to establish an allegation is on the party making an allegation, the test being that he who does not lead evidence must fail. The Bombay High Court further held that the provisions of Rule 10-B of the Industrial Disputes (Central) Rules, 1957 clearly indicates that the party who raises an industrial dispute is bound to prove the contentions raised by him and the Industrial Tribunal or the Labour Court would be erring in placing the burden of proof on the other party of the dispute.

4. In the present case, since the dispute was raised by the workman and the reference was made by the Government at his instance, the burden was on the workman to prove that the action of the employer in terminating his services w.e.f. 25-6-95 is illegal and unjustified. However, inspite of giving opportunities to the workman to appear in the matter and file his Statement of Claim, he did not do so. This fact clearly shows that the workman is not interested in pursuing further with the matter. There is no material before me to hold that the action of the employer in terminating the services of the workman is not legal and justified. In the absence of any evidence, it cannot be held that the action of the Employer in terminating the services of the workman is not legal and justified. Consequently, I hold that the workman has failed to prove that the action of the employer in terminating his services w.e.f. 25-6-95 is not legal and justified.

Hence, I pass the following order:—

ORDER

It is hereby held that the action of M/s LIC Housing Finance Limited, Panaji Goa, in terminating the services of the workman Shri Sudesh Kerkar, Messenger, w.e.f. 25-6-95 is legal and justified. It is hereby further held that the workman Shri Sudesh Kerkar is not entitled to any relief.

No order as to costs

Inform the Government accordingly.

Sd/
(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/98/9733

The following Award dated 3-7-1998 in Reference No. IT/35/93 given by the Industrial Tribunal, Panaji, Goa, is hereby published as required under the

provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary, Labour.

Panaji, 15th July, 1998.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri Aji J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/35/93

Shri Sunil Kerkar,
Rep. by the President,
The Newspaper & Press
Employees Union,
Betim, Bardez Goa.

— Workman/Party I

V/s

M/s. B. K. Printers,
4-5, Dr. A. B. Road,
Panaji Goa.

— Employer/Party II

Workman/Party I represented by Adv. Shri J. Parsekar.

Employer/Party II represented by Adv. Shri L. V. Talaulikar.

3rd July, 1998.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Government of Goa by order No. 28/10/93-LAB dated 19-4-1993 referred the following dispute for adjudication to this Tribunal.

"Whether the action of the management of M/s B. K. Printers, Panaji Goa, in terminating the services of Shri Sunil Kerkar, Compositor, w.e.f. 23-5-77 is legal and justified?

If not, to what relief the workman is entitled?"

2. On receipt of the reference, a case was registered under No. IT/57/97 and registered A/D notice was issued to the Parties. In pursuance to the said notice, the parties put in their appearance. The workman/party I (For short "workman") filed the statement of claim which is at Exb. 4. The facts of the case in brief as pleaded by the workman are that the workman was employed with the employer/party II (For short "Employer") from 21-1-72.

That his services were terminated by way of victimisation for his trade union activities w.e.f. 23-5-77 vide order dated 2-3-78. That before terminating his services, chargesheets dated 16-2-77 and 24-2-77 were issued to him. That the enquiry which was held into the said charges was not held properly. That the employer terminated his services during the pendency of the proceedings before the Industrial Tribunal for which he filed a complaint before the said Tribunal which was registered as IT/13/79. That the workman contended that the termination of his services by the employer is illegal, unjustified and amounts to unfair labour practice. The workman therefore claimed that he is entitled to reinstatement with full back wages and other consequential benefits.

2. The employer filed the written statement which is at Exb.6 denying the claim of the workman. The employer stated that the proceedings in the present reference or on the point at issue is barred by the principle of res-judicata or by the principles of analogous thereto in view of the order dated 15-2-82 passed by this Tribunal in case No.IT/13/79 holding that the complaint filed by the workman under section 33(A) of the I. D. Act, 1957 is maintainable which complaint was as regards the termination of the services of the workman in violation of the provisions of Sec-33 of the I. D. Act, 1947. The employer stated that the reference otherwise also is not maintainable because the workman raised the dispute as regards the termination of his services after a lapse of about 15 years. The employer denied that the services of the workman were terminated by way of victimisation for his alleged Trade Union activities. The employer stated that the workman had committed acts of misconducts such as causing obstruction to the smooth running of the establishment, tampering with the records of the establishment, refusing to accept the communication served on him and doing acts subversive of discipline and good behaviour and therefore, the workman was chargesheeted and subsequently, enquiry was held against him. The employer denied that no proper enquiry was conducted against the workman before terminating his services. The employer stated that in Ref.case No.IT/13/79, this Tribunal had held that the enquiry conducted against the workman was fair and proper. The employer denied that the termination of services of the workman is illegal, unjustified or that it amounts to unfair labour practice. The employer stated that in view of the award dated 7-2-89, passed by this Tribunal in Ref.No.IT/13/79, the workman is not entitled to be reinstated in service or for any other reliefs. The employer therefore, prayed that the reference be rejected.

3. On the pleadings of the parties, issues were framed and the case was fixed for the evidence of the workman. On 21-4-98, when the case was fixed for hearing, the parties submitted that the dispute between them has been amicably settled and they filed the terms of settlement dated 21-4-98 duly signed by the parties. The parties also filed an application praying that award be passed in terms of the consent terms dated 21-4-98 filed by the parties. I have gone through the consent terms and I am satisfied that the said terms are certainly in the

interest of the workman. I therefore, accept the submissions made by the parties and pass the consent award in terms of the consent terms dated 21-4-98 Exb.11.

ORDER

1. The workman Shri Sunil Kerkar has agreed to accept as and by way of compensation a sum of Rs. 6,000/- (Rupees Six Thousand only) in full and final settlement of his claim under dispute.
2. The workman declares that he has no other claim of any legal dues whatsoever against the employer respecting the tenure of his service with the Employer till the date of termination of his service by the employer and the present compensation of Rs. 6,000/- (Rupees Six Thousand only) is in full satisfaction and discharge of his claim under dispute against the Employer/Party II.

No order as to costs.

Inform the Government accordingly.

Sd/-
(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Award/98/9976

The following Award dated 15-7-1998 in Reference No. IT/60/92 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary, Labour.

Panaji, 30th July, 1998.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/60/92

Shri R. V. Kobrekar;
Anandwadi,
Sanvordem Goa.

— Workman/Party I

V/s

M/s Sanjivani Sahakari Sakhar
Kharkhana Ltd,
Dayanandnagar, Tisk,
Usgao Goa.

— Employer/Party II

Workman/Party I represented by Adv. Shri A. Couto.

Employer/Party II represented by Adv. Shri A. Diniz.

Dated:- 15-7-98.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Goa by order bearing No. 28/34/92-LAB dated 1-10-1992 referred the following dispute for adjudication to this Tribunal.

1. Whether Shri R. V. Kobrekar, Jr. Engineer (Civil) in M/s Sanjivani Sahakari Sakhar Kharkhana Ltd; Dayanand Nagar, is a workman under section 2(a) of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) ?
2. If so, whether the action of the management of M/s Sanjivani Sahakari Sakhar Kharkhana Ltd; in terminating the services of Shri R. V. Kobrekar w.e.f. 22-12-1980 is legal and justified ?
3. If the answer to (2) above is negative, to what relief the workman is entitled ?

2. On receipt of the reference, a case was registered under No. IT/60/92 and a registered A.D. notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The workman/Party I (for short "Workman") filed his statement of claim which is at Exb. 4. The facts of the case in brief as pleaded by the workman are that he was employed with the employer/Party II (For short "Employer") as a Civil Engineer in January 1973 and continued on the same post till 22-12-80. That the duties prescribed for the said post were in accordance with the Wage Board and no specific duties were mentioned. That as a part of his duties, he was drawing the plans, surveying, preparing estimates, preparing tenders etc. That on 22-12-80, the Managing Director of the employer issued a letter to him informing that his services stood terminated w.e.f. 22-12-80 stating that the employer no longer requires his services. That his services are terminated without giving him any opportunity and following the norms and also no fault in his work nor any mistake was committed by him in the process of his working. That the workman approached Civil Judge, Senior Division, Quepem, but his application was rejected on the ground of non-serving of notice on the employer. That the workman filed an application before the Conciliation Officer on 25-10-91 and since he didn't show any interest in settling the dispute, the matter prolonged un-necessarily. The workman contended that the termination of his service is illegal. He contended that he is a workman as per Sec. 2 (S) of the Industrial Disputes Act, 1947. The workman therefore, claimed that the order

dated 22-12-80 of the employer, terminating his services is liable to be set aside and he is liable to be reinstated in service with full back wages.

3. The Employer filed written statement which is at Exb. 5. The employer stated that the workman is not a "Workman" within the meaning of Sec. 2 (s) of the I. D. Act, 1947. The employer stated that the workman was appointed as a Civil Engineer and was the head of the Civil Engineering Department and he performed duties in a managerial/administrative capacity as also in a supervisory capacity. The employer stated that there were six permanent employees, namely, Supervisor, Mason, Carpenter, Fitter, Clerk and Peon who were working under the Supervision of the workman and he was allotting duties to them and also he could engage daily wage workers with the approval of the Managing Director. The employer stated that the workman could sanction three days casual leave, sick leave and could recommend higher leave period for his staff and also could recommend promotion for his staff as also disciplinary action against them. The employer stated that at the time when the services of the workman were terminated, he was drawing the salary of Rs. 1132/- per month. The employer denied that the post of the Civil Engineer is filled in accordance with the Central Sugar Wage Board II or that the duties prescribed were in accordance with the Wage Board or that there were no specific duties. The employer stated that the services of the workman were terminated in terms of the Contract of Employment dated 3-11-72. The employer stated that besides filing Civil Suit in Quepem Court and an application before the Registrar of Co-operative Societies, the workman had also filed two writ petitions in the High Court as regards termination of his service and the said writ petitions were also dismissed in limine. The employer stated that in view of the above fact, the workman cannot agitate the matter of termination before the Tribunal and the reference itself is illegal as the order was passed on 22-12-80 and the same is challenged in the year 1993 i.e. after more than twelve years. The employer denied that the workman is a workman under the I. D. Act, 1947 or that his services are terminated illegally. The employer denied that the workman is entitled to any relief as claimed by him and prayed that the claim made by the workman be rejected. The workman thereafter filed Rejoined which is at Exb. 6.

4. On the pleadings of the parties, following issues were framed at Exb. 7.
1. Does Party I prove that he was a workman under Section 2(s) of the Industrial Disputes Act, 1947 ?
2. If not, whether the present reference is maintainable ?
3. If yes, does he prove that the action of Party II in terminating his services w. e. f. 22-12-1980 is not legal and justified ?

4. Does Party No. II prove that the services of the Party I were terminated in terms of the contract of employment dated 3-11-1972 ?
5. Is Party I entitled to any relief?
6. What Award or Order?

5. My findings on the issues are as follows:—

- Issue No. 1 :- In the negative
- Issue No. 2 :- Reference is not maintainable
- Issue No. 3 :- Does not arise
- Issue No. 4 :- Does not arise
- Issue No. 5 :- In the negative
- Issue No. 6 :- As per order below.

REASONS

5. Issue No. 1 :- Adv. Shri Couto, the learned counsel for the workman submitted that the workman in his deposition has stated the duties which he was performing. He submitted that the workman has stated in his deposition that he was doing the work as per the instructions and as per directions of the Managing Director of the employer. He submitted that the workman has stated that he was supervising over the work of labourers carried out by the contractor and that he was not sanctioning leave, had no powers to promote the staff nor could take decisions independently. He submitted that the workman was employed in technical capacity and was doing supervisory work. He submitted that the workman has examined Shri Ashok Gaonkar and Shri Mangaldas Pawaskar as his witnesses and they have supported the case of the workman. He further submitted that the duties performed by the workman do not fall within the exceptions of Sec.2(s) of the I. D. Act, 1947 and since as per the letter of appointment Exb.w-1, the salary of the workman was Rs. 450/- per month, he is well covered by the definition of workman as given in Sec.2(s) of the I. D. Act, 1947. He relied upon the decision of the Allahabad High Court in the case of M/s U. P State Sugar Corporation Ltd. Meerut V/s Deputy Labour Commissioner, Meerut, reported in 1990 LIC 645.

Adv. Shri Diniz, the learned counsel for the employer on the other hand submitted that though the salary of the workman was initially fixed at Rs. 450/- per month, he was promoted to Grade-I in the year 1975 and his last salary was Rs. 1170/- per month. He submitted that the fact has been admitted by the workman in his cross examination. He submitted that from the evidence of the workman, it is proved that the workman was performing duties which were mainly of managerial/administrative and also he was performing duties mainly of supervisory nature and was drawing wages exceeding to Rs. 500/- per month. He submitted that the service of the workman were terminated from 22-12-80 and the amendment to Sec.2(s) of the I. D. Act, 1947 increasing the wages from Rs. 500/- per month to Rs. 1600/- per month was brought into effect in the month of August 1984. Adv. Shri Diniz, submitted that the duties performed by the workman as admitted by him in his evidence falls within the exceptions to Sec.2(s) of

the I. D. Act, 1947 and therefore, he is not a workman as defined under Sec. 2 (s) of the I. D. Act, 1947.

6. I have carefully considered the arguments advanced by both the learned counsels. In the present case, the reference itself mentions whether the workman Shri R. V. Kobrekar is a workman under Sec. 2 (s) of the I. D. Act, 1947 and therefore, the burden was on the workman to prove that he is a workman as defined under the Act and hence, the Issue No. I was framed accordingly casting the burden on the workman to prove that he is a "workman" as defined under the Act. It is therefore, to be seen whether the workman has discharged this burden by leading proper evidence. In the present case, only the workman has led evidence and the employer in spite of having given opportunity did not lead any evidence in the matter. The workman has examined himself and two witnesses namely Shri Ashok Gaonkar and Shri Mangaldas Pawaskar in support of his case. The service of the workmen were terminated w.e.f. 22-12-80 and therefore, the definition of workman as stood at that time is relevant. The definition of workman was amended by Amendment Act No. 46 of 1982 w.e.f. 21-8-1984. therefore, we are concerned with definition of workman as it stood prior to 21-8-1984. Prior to 21-8-1984, Sec.2(s) of the I. D. Act, 1947, defined workman as follows:—

"Workman means any person (including an apprentice) employed in any industry to do any skilled or unskilled, manual, supervisory, technical or clerical work for the hire or reward, whether the terms of employment be expressed or implied, and for the purposes of any proceedings under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person:—

(i) who is subject to the Army Act, 1950, or the Air Force Act, 1950 or the Navy (Discipline) Act, 1934; or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity draws wages exceeding five hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested to him, functions mainly of a managerial nature."

As per the said definition, a person who was employed in a supervisory capacity and who drew wages exceeding Rs. 500/- per month was excluded from the definition of workman, as per the exceptions laid down under the said section. Adv. Shri Couto, the learned counsel for the workman has contended that the duties of the workman were that of technical in nature and though he was doing supervisory work, he was drawing wages less than Rs. 500/- per month, the workman falls within the definition of "workman". Whereas, Adv. Shri Diniz,

the learned counsel for the employer has contended that the workman was performing duties of managerial/administrative nature as also of supervisory nature and since he was drawing wages of more than Rs. 500/- per month at the relevant time, he fell within the exception to the definition of "workman". The Supreme Court in the case of *Anand Baazar Patrika (P) Ltd. V/s WORKMEN* reported in 1950-83 SCLJ Vol. 6 at page 607 and in the case of *Burmahshell Oil Storage & Distributors Company v/s Burmahshell Management Staff Association* reported in 1950-83 SCLJ Vol. 6 at page 545 has held that to decide whether a person is a workman or not, what is required to be seen is the main work carried out by that person and not the incidental work done by him. The Bombay High Court in the case of *S. A. Sarang V/s S. W. G. Forge and Allied Industries Ltd.* reported in 1995 I CLR 837 has held that it is a settled law that it is the actual work done by the employee which is determinative of whether he falls within the scope of the definition of workman under section 2(s) of the Act and not his designation. Therefore, to find out whether the workman *Shri R. V. Kobrekar* is a workman within the meaning of the definition or not, what is required to be considered is the principal or main duties performed by him and not the incidental work done by him.

7. The workman has examined himself and two witnesses in support of his case that he is a "workman". The workman in his deposition has stated that he was employed with the employer as a Jr. Civil Engineer from 2nd January 1973 and he has produced the appointment letter dated 3-11-1972 at Exb. W-1. He has stated that he was required to carry out the construction work as per the instructions of the Managing Director and that he was also carrying out the work of maintenance of the factory as per the instructions of the Managing Director. He has stated that being satisfied with his work, he was promoted to Grade I by the employer in 1975 and that his last drawn salary was Rs. 1170/- p.m. In his cross examination, he has admitted that there was a Civil Engineering Department and he was working in its Civil section. He has admitted in his cross that besides him, one clerk, one peon, one supervisor, one mason, one fitter, one carpenter were working in the said section and that all the above said persons were working under him. He admitted that he was the Head of the Civil Section and he was supervising over the permanent as well as daily wage employees. He also admitted that he could sanction leave upto 3 days of the permanent employees and that he had recommended promotions of the persons working under him. He further admitted that he used to allot work as per the instructions from the Managing Director. The workman has examined two witnesses namely *Shri Ashok Gaonkar* and *Shri Mangaldas Pawaskar*. Both these witnesses have admitted that the workman was supervising over the work done by the workers who were carrying out Civil work of the employer. They however stated that he was doing the above work as per the instructions from the Managing Director. Thus, from the evidence which has been discussed by me above, it is established that the workman was working with the employer as a Civil Engineer and was promoted to Grade - I in the year 1975; his last drawn salary was Rs. 1170/-

p.m.; he was the head of the civil section in the engineering department; there were staff members such as a clerk, peon, supervisor, mason, fitter, carpenter in the civil section who were working under him, he was supervising over the permanent as well as daily wage employees; he was sanctioning leave of the permanent employees upto 3 days, he was recommending promotions of the employees working under him; he was allotting work to the employees; he was supervising over the work done by the workers who were carrying out the civil work of the employer. In my view, it is immaterial whether the workman was carrying out certain work from the above as per the instructions from the Managing Director or not. What is relevant is the nature of the work done by him. The kind of work done by the workman which are enumerated by me above are nothing but of mainly supervisory nature and partly administrative/managerial nature. I therefore, hold that the workman was performing the duties mainly of supervisory nature and partly of administrative/managerial nature. Adv. *Shri Couto* has relied upon the decision of the Allahabad High Court in the case of *M/s U. P. State Sugar Corporation, Meerut (Supra)*. In my view this decision does not help the workman. In the said case, the High Court has not laid down a general proposition that all the Asst. Engineers are not workman. In the said case, considering the duties performed by the concerned Asst. Engineer, the High Court found that he was performing duties mainly of Technical nature and therefore, he was a "workman". The High Court found that the Asst. Engineer did the work of Technical nature and he did not allocate jobs to the workers as it was done by the manager or the Chief Engineer; he has no power to sanction leave to any of the workmen working under him nor he could exercise any disciplinary control over the workmen and hence the High Court held that the duties performed by the said Asst. Engineer cannot be said to be of supervisory nature. In the present case, the evidence shows that the workman was allotting work to the employees working under him and he was sanctioning leave of the permanent employees as also he was recommending their promotions. Thus, on the contrary, the above decision of the Allahabad High Court in fact supports the case of the employer that the workman was performing the duties mainly of supervisory nature and partly of managerial/administrative nature, and since was drawing wages of more than Rs. 500/- p. m. on the date of termination of his service, which is admitted by the workman in his evidence, he falls within the exception of the definition of "workman" as defined under Sec. 2(s) of the I. D. Act, 1947 as it stood prior to the Amendment Act 46 of 1982 and hence he is not a "workman". I therefore, hold that the workman *Shri R. V. Kobrekar* has failed to prove that he is a "workman" as defined under Sec. 2(s) of the I. D. Act, 1947, and hence I answer the issue No. 1 in the negative.

8. *Issue No. 2:-* The appropriate Government can make reference of only an industrial dispute for adjudication by an Industrial Tribunal and not any other dispute. Sec. 2(k) of the I. D. Act 1947 defines industrial dispute. As per the said definition, the dispute or the difference must be between the employer and the workman. Who is a workman has

been defined under Sec. 2(s) of the I. D. Act, 1947. After analysing the evidence on record, I have held that the workman Shri R. V. Kobrekar is not a "workman" as defined in Sec. 2(s) of the Act. This being the case, the dispute which is referred by the Government is not an industrial dispute and therefore, the reference made by the Government is bad in law and not maintainable and hence the same is liable to be rejected. I therefore, hold that the reference made by the Government is bad in law and not maintainable and hence answer the issue No. 2 accordingly.

9. Since the reference itself is bad in law and not maintainable, the question of deciding other issues or granting relief to the workman does not arise. I therefore, answer the remaining issues accordingly.

In the circumstances, I pass the following order.

ORDER

It is hereby held that Shri R. V. Kobrekar, Jr. Engineer (Civil) in M/s Sanjivani Sahakari Sakhar Kharkhana Limited, Dayanand Nagar, is not a workman under Sec. 2 (s) of the Industrial Disputes Act, 1947. It is hereby further held that the dispute referred by the Government is bad in law and not maintainable as there is no industrial dispute. The reference made by the Government is therefore, rejected.

No order as to cost.

Inform the Government accordingly.

Sd/-
(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

Order

No.CL/Pub-Awards/98/12204

The following Awards dated 28-10-1998 in Reference No. IT/62/98 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.
R. S. Mardolker, Ex-Officio Joint Secretary (Labour).
Panaji, 10th December, 1998.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

REF No. IT/62/98

Shri Balu Pandit
Rep. By the General Secretary,
Goa Engineering Workers Union,
P. O. Box No. 90
Vasco da Gama

— Workman/Party I

V/s

Shri Ashfag A. K.
Contractor
Flat No. 3, 2nd Floor,
Raghavendra Apartments,
Kiratalem, Baina
Vasco da Gama

— Employer/Party II

Workman/Party I present in person.

Employer/party II present in person.

Dated: 28-10-98.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Government of Goa by order No. IRM/CON/SG/(17)/98/9775 dated 16th July, 1998 referred the following dispute for adjudication to this Tribunal.

"Whether the demand of Goa Engineering Workers' Union, for payment of full wages to Shri Balu Pandit by the Employer Shri Ashfag A. K., Contractor, for the period from 15-9-97 to 28-2-98 is legal and justified ?

If not, to what relief the workman is entitled ?"

2. On receipt of the reference, a case was registered under No. IT/62/98 and registered A/D notices were issued to the parties. In pursuance to the said notice, the parties appeared and submitted that they have arrived at a settlement and prayed for time to file the settlement. On 8-10-98, when the case was fixed for hearing, the workman as well as the employer appeared and they filed an application at Exb. 3 stating that the employer has agreed and paid the salary of the workman for the disputed period. Therefore, there is no dispute existing. They also prayed that since the dispute is settled, no dispute award be passed.

3. In the present case, the dispute which had been referred by the Government is as regards the payment of full wages to the workman by the employer for the period from 15-9-97 to 28-2-98. As per the application filed by the parties at Exb. 3, the employer has already paid the amount of salary for the disputed period to the workman. This being the case, the dispute does not exist and consequently, the reference does not survive. In the circumstances, I pass the following order.

ORDER

It is hereby held that the reference does not survive since the dispute does not exist.

No order as to costs.

Inform the Government accordingly.

Sd/-
(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/98/10123

The following Award dated 23-6-1998 in reference No. IT/12/98 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 11th August, 1998.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/12/98

Shri Devendra R. Naik,
Rep. by the General Secretary,
KTC, Workers Union,
54 Defence Colony,
Alto Porvorim, Bardez Goa. — Workman/Party I

V/s

M/s Kadamba Transport
Corporation Ltd.,
Bus Terminus,
Panaji-Goa. — Employer/Party II

Workman/Party I absent.

Employer/Party II represented by Shri R. K. Pillai.

Dated:- 23-6-98.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Government of Goa by order No. IRM/CON/(80)/96/7328 dated 13-2-1998 referred the following dispute for adjudication to this Tribunal.

"Whether the action of the management of M/s Kadamba Transport Corporation Ltd, Panaji Goa, in imposing punishment of stoppage of two annual increments for the year 1996-97 on Shri Devendra R. Naik, Conductor, is legal and justified?

If not, to what relief the workman is entitled?"

2. On receipt of the reference, a case was registered under No. IT/12/98 and registered AD notice was issued to the parties. The Employer/Party II (For short "Employer") was duly served with the notice. As regards the notice sent to the workman/Party I (For short "Workman"), the same was returned unserved with postal remark "Unclaimed". Therefore, the case was adjourned

from 26-3-98 to 13-4-98 and a fresh notice under certificate of posting was ordered to be issued to the workman. Consequently, the workman was served with the notice under certificate of posting. In spite of being served by notice, the workman did not appear nor any other person appeared on his behalf. The employer was represented by Shri A. S. Sirvoikar. One more opportunity was given to the workman to file his Statement of Claim and the case was adjourned to 24-4-98. On the said date also, none appeared on behalf of the workman and consequently, no Statement of Claim came to be filed on his behalf. Shri R. K. Pillai, representing the employer submitted that he does not want to file any statement of claim/written statement on behalf of the employer. He submitted that since it is the case of the workman that imposing punishment of stoppage of two annual increments for the year 1996-97 on him is illegal and unjustified, the burden was on him to prove the same. He submitted that since the workman has failed to appear and file statement of claim, the reference cannot be answered in his favour.

2. The reference of the dispute has been made by the Government at the request of the workman since he challenged the action of the employer in imposing on him the punishment of stoppage of two annual increments for the years 1996 and 1997. This dispute was raised by him through the Union namely Kadamba Transport Corporation Workers Union. It is a settled law that the party who challenges the legality of the order or the action taken by the employer, the burden lies on that party to prove the legality of the said order or the action. The Allahabad High Court in the case of V. K. Raj Industries V/s Labour Court and others reported in 1981 (29) FLR 194 has held that the proceedings before the Industrial Court are judicial in nature even though the Indian Evidence Act is not applicable to the proceedings before the Industrial Court but the principles underlying the said Act are applicable. The High Court has held that it is well settled law that if the party challenges the validity of an order, the burden lies upon him to prove the legality of the order and if no evidence is produced, the party invoking the jurisdiction must fail. The High Court has further held that if the workman fails to appear or to file Written Statement or to produce evidence, the dispute referred by the Government cannot be answered in favour of the workman and he would not be entitled to any reliefs. The Bombay Court, Panaji Bench, in the case of N. N. S. Engineering Services V/s Industrial Tribunal, Goa, Daman and Diu and another reported in FJR Vol. 71 at page 393 has held that the obligation to lead evidence to establish an allegation is on the party making an allegation, the test being that he who does not lead evidence must fail. The Bombay High Court further held that the provisions of Rule 10-B of the Industrial Disputes (Central) Rules, 1957 clearly indicates that the party who raises an industrial dispute is bound to prove the contentions raised by him and the Industrial Tribunal or the Labour Court would be erring in placing the burden of proof on the other party of the dispute.

3. In the present case, the dispute was raised by the workman through the Union and it is at the instance of the Workman/Union that the reference was made by the Government. Therefore, applying the law laid down by the Bombay High Court and the Allahabad High Court in the above referred cases, the burden was on the workman to prove that the action of the Employer in imposing on him the punishment of stoppage of two annual increments for the years 1996 and 1997 is illegal and unjustified. However, the workman or the Union, inspite of being given opportunities to file statement of claim failed to do so. It is therefore evident that the Workman/Union is not interested in pursuing with the matter and therefore, there is no material before me to hold that the action of the employer in imposing punishment of stoppage of two annual increments for the year 1996 and 1997 on the workman is not legal and justified. In the absence of any evidence, the reference cannot be answered in favour of the workman.

Hence, I pass the following order.

ORDER

It is hereby held that the action of the management of M/s Kadamba Transport Corporation Limited, Panaji Goa, in imposing punishment of stoppage of two annual increments for the year 1996 and 1997 on the workman Shri Devendra R. Naik is legal and justified. It is hereby further held that the workman Shri Devendra R. Naik is not entitled to any relief.

No order as to costs.

Inform the Government accordingly.

Sd/-
(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/98/10858

The following Award dated 28-8-1996 in Reference No. IT/44/1997 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary.

Panaji, 22nd September, 1998.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI.

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

No. IT/44/97

Smt. Rosalina Rodrigues,
Church Street,
Cortalim-Goa.

— Workman/ Party I

V/s

M/s Christine Hoden (India),
Pvt. Ltd.,
Cortalim-Goa.

..... Employer/Party II

Workman-Party I represented by Adv. Shri P. H. Sawant.

Employer-Party II represented by Adv. Shri D. P. Bhise

Panaji, dated: 28-8-98.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by its order No. IRM/CON/VSC/(28)/97/4265 dated 11th August 1997 referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s Christine Hoden (INDIA) Pvt. Ltd., Cortalim-Goa, in terminating the services of Smt. Rosalina Rodrigues, with effect from 27-7-1994, is legal and justified ?

If not, to what relief the workman is entitled ?"

2. On receipt of the reference a case was registered under No. IT/44/97 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The parties submitted that the dispute is being settled between them amicably and on 20-7-98 when the case was fixed for hearing the workman appeared in person and Shri A. A. Tandel appeared on behalf of the employer and submitted that the dispute between the parties was duly settled and filed consent terms dated 20th July 1998 at Exb.3. The parties prayed that consent award be passed in terms of the settlement. I have gone through the consent terms and I am satisfied that the said terms are certainly in the interest of the workman. The said terms are signed by the workman as well as the employer as well as by their respective Advocates. I accept the submission made by the parties and pass the consent award in terms of the consent terms dated 20th July 1998 Exb. 3.

Order

1. That Party II shall pay Rs.80,000/- (Rupees Eighty Thousand only) towards full and final settlement.
2. That Party I is paid by cheque No. 669846 dated 6-11-97 and cheque no. 1433 dated 25-9-97 an

amount of Rs. 80,000/- (Rupees Eighty Thousand only) which Party I acknowledges of having realised and received the aforesaid amount. That consequent to above payment, Party I-Workman shall have no further claim of whatsoever nature against Party II.

There shall be no order as to cost.

Inform the Government accordingly.

Sd/-
(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/98/12205

The following Award dated 24-9-1998 in Reference No. IT/1/95 given by the Industrial Tribunal, Panaji- Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).
Panaji, 10th December, 1998.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/1/95

Shri Mahesh G. Panshikar
Curti, Ponda-Goa.

— Workman/Party I

V/s

M/s Shanta Electric Stores
Ponda-Goa.

— Employer /Party II

Workman/Party I represented by Adv. Shri P. B. Devari.

Employer/Party II represented by Adv. Shri B. G. Kamat.

Panaji, dated: 24-9-1998.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order No. 28/51/94-LAB dated 20-12-1994 referred the following dispute for adjudication by this Tribunal.

(1) Whether the action of the management of M/s Shanta Electric Stores, Ponda-Goa, in terminating the services of their workman Shri Mahesh G. Panshikar, salesman, with effect from 13-12-1992 is legal and justified?

(2) If not, to what relief the workman is entitled?

2. On receipt of the reference a case was registered under No. It/1/95 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The workman/party I (for short, "Workman") filed his statement of claim which is at Exb. 5. The facts of the case in brief as pleaded by the workman are that he was employed with the employer/party II (for short, "Employer") as a salesmen from 25-2-91 and his last drawn wages were Rs. 600/- p. m. That the employer terminated his services on 13-12-92 and at the time of termination of his service the employer did not conduct any enquiry nor paid his legal dues nor complied with the provisions of Sec. 25 FFF of the Industrial Disputes Act, 1947. That from the date of termination of his service he is unemployed. The contention of the workman is that termination of his service is illegal and unjustified and hence he is entitled to be reinstated in service with full back wages and continuity in service.

3. The employer filed written statement which is at Exb. 6. The employer denied that there was any dispute between the workman and the employer as regards termination of service of the workman. The employer stated that the only dispute was as regards alleged non-payment of the dues of the workman. The employer stated that on receipt of the notice from the conciliation Officer, Ponda, the employer demanded the copy of the complaint/demand made by the workman and on receipt of the said complaint/demand it was found that the workman wanted assistance/intervention of the conciliation machinery in the matter of recovery of his legal dues from the employer. The Employer stated that the matter of termination of service was never the subject matter of dispute between the workman and the employer before the Conciliation Officer and therefore the present reference is incompetent and void. The employer stated that the workman was employed from 1-8-91 and not from 25-2-91 as contended by the workman. The employer denied that the services of the workman were terminated and stated that he retired from service w.e.f. 13-12-92. The employer denied that any enquiry was required to be held or that any legal dues of the workman were to be paid or that the provisions of sec. 25-FFF of the Industrial Disputes Act, 1947 were required to be complied with by the employer. The employer denied that the services were terminated and stated that the workman is not entitled to any relief as claimed by him. The workman thereafter filed rejoinder which is at Exb. 7.

4. On the pleadings of the parties following issues were framed.

1. Whether Party I proves that he was employed with Party II as a Salesman w.e.f. 25-2-91?
2. Whether Party I proves that Party II terminated his services without complying with the provisions of sec. 25 FFF of the I. D. Act, 1947?
3. Whether Party I proves that the termination of his services by Party II w.e.f. 13-12-92 is illegal and unjustified?
4. Whether Party II proves that Party I never raised the dispute before the Party II or the Conciliation officer as regards the termination of his services and hence the reference is not maintainable?
5. Whether Party II proves that Party I voluntarily retired from service w. e. f. 13-12-92 ?
6. Whether party I is entitled to any relief?
7. What award?

5. My findings on the issues are as follows:

- Issue No. 1 : Does not arise
Issue No. 2 : Does not arise
Issue No. 3 : Does not arise
Issue No. 4 : In the affirmative
Issue No. 5 : Does not arise
Issue No. 6 : In the negative
Issue No. 7 : As per order below.

REASONS

6. *Issue No. 4:-* This issue is taken up first as it goes to the root of the matter as to whether the reference is maintainable. Adv. Shri B. G. Kamat, the learned counsel for the employer submitted that in the written statement filed by the employer contention was raised that the reference is not maintainable because the workman never raised the dispute as regards termination of his service. He submitted that the workman has produced the complaint at Exb.W-1 which he made to the Asst. Labour Commissioner, Ponda, and he has admitted that with reference to the said complaint the Asst. Labour Commissioner held Conciliation proceedings. He submitted that in the said complaint there is no mention that his services are illegally terminated nor there is demand that he should be reinstated in services. He submitted that the complaint refers to only non payment of his legal dues. He submitted that reference could not have been made unless there was specific demand for reinstatement before Conciliation Officer or before the employer. In support of his contention that the reference is not maintainable he relied upon the decision of the Himachal Pradesh High Court in the case of *M/s Village Papers Pvt. Ltd., v/s State of Himachal Pradesh* and others reported in 1993 Lab.

IC 99. Adv. Shri Devari, the learned counsel for the workman submitted on the other hand that the workman has raised the dispute as regards termination of his services by complaint/ letter Exb.W-1. He submitted that the workman has examined himself and he has deposed to that effect. He submitted that in the conciliation proceedings held by the Asst. Labour Commissioner, neither the employer filed any reply to the complaint/ letter of the workman nor participated in the said proceedings. He submitted that there is no substance in the contention of the employer that reference is not maintainable.

7. In the present case the dispute which has been referred by the Government is as regards the termination of the services of the workman by the employer. The contention of the workman is that the action of the employer in terminating his services w. e. f. 13-12-92 is illegal and unjustified. The employer has raised the defence that the reference is not maintainable because there was no dispute between the employer and the workman on the issue of termination of service of the workman. It is the contention of the employer that before the reference was made by the Government, there should have been a demand from the workman on the Conciliation Officer or on the employer for his reinstatement in service on the ground that termination of his service is illegal and unjustified. In the case of *Sindhu Resettlement Corporation Ltd. v/s Industrial Tribunal of Gujrat* and others, reported in AIR 1968 SC 529, the Supreme Court has held that an industrial dispute as defined must be a dispute between employer and employees, employers and workmen and workmen, and that a mere demand to a Government without a dispute being raised by the workman with their employer cannot become an industrial dispute. In para. 4 of the Judgement the Supreme Court held as follows:—

"..... It may be that the Conciliation Officer reported to the Government that an Industrial Dispute did exist relating to the reinstatement of respondent no. 3 and payment of wages to him from 21st January 1958 but when the dispute came up for the Tribunal, the evidence produced clearly showed that no such dispute had even been raised by either respondent with the management or the appellant. If no dispute at all was raised by the respondents with the management any request sent by them to the Government would only be demand by them and not an industrial dispute between them and their employer....."

The above decision of the Supreme Court therefore lays down the law that the dispute which is referred by the Government must be the one which was raised by the workman with the employer. If it is not, the dispute referred cannot be an industrial dispute, and the reference made by the Government under Sec. 10 of the I. D. Act, 1947 in respect of that dispute is not competent, as has been held by the Supreme Court in the above referred case. Adv. Shri B. G. Kamat, the learned counsel for the employer has relied upon the decision of the Himachal Pradesh High Court in the case of *M/s Village Papers Pvt. Ltd., (supra)* which is a full bench decision. The Himachal

Pradesh High Court after considering the decisions of the various High Courts and that of the Supreme Court, including the decision of the Supreme Court in the case of Sindhu Resettlement Corporation Ltd., (supra) has held that a mere demand to the Government cannot become an industrial dispute without it being raised by the workmen with their employer, and if such a demand is made to the Government it can be forwarded to the management and if rejected becomes an industrial dispute. The High Court has also held that a demand can be made through the Conciliation Officer who can forward it to the management and seek its reaction and if the reaction is negative and not forthcoming and the parties remain at logger-heads, a dispute exists and a reference can be made.

8. Therefore what is established from the above referred decisions is that unless there is a demand from the workman on the employer prior to the making of the reference, the Government cannot make reference of the dispute to the Tribunal for adjudication. This demand can be raised directly with the employer or through the Conciliation Officer. In the present case the workman has examined himself. He has produced the complaint made to the Asst. Labour Commissioner, Ponda, at Exb. W-1. This complaint is dated nil. In this complaint the workman did not make the demand that the employer should be directed to reinstate him in service. The subject matter of the said complaint itself states that the complaint is for non payment of his wages. The contents of the said complaint clearly show that the grievance of the workman was only as regards non payment of his dues by the employer. The workman in his cross examination has stated that he made the complaint to the Asst. Labour Commissioner demanding the payment of his dues including the dues as regards termination of his service. This statement of the workman clearly shows that all along his demand was for payment of his dues and not for reinstatement in service. Another important factor which is required to be considered is that the workman made the complaint to the Asst. Labour Commissioner almost one and half year after his services were terminated. This is evident from the evidence of the workman himself. The workman in his cross examination has stated that he made the complaint about 8 to 10 days before the first meeting was fixed by the Asst. Labour Commissioner. The notice dated 10-5-94 Exb. W-3 shows that the Asst. Labour Commissioner has fixed the first meeting on 23-5-94. Since the notice is dated 10-5-94 it means that the workman had made the complaint in the first week of May 1994 which is almost one and half year after his services were terminated. If the workman was interested in reinstatement he would have made the complaint immediately and not waited for one and half year. Besides, the workman in his cross examination has admitted that after termination of his service he worked with one M/s Nutan Medical Stores at Ponda for few days and thereafter he was helping his family members in agricultural work. This admission on the part of the workman coupled with the fact that the workman made the complaint almost one and half year later lends support to the fact that the

workman was never interested in reinstatement in service but he was interested in recovering his dues only. There is no evidence on record to show that the workman had raised the dispute as regards termination of his service by the employer and that he had demanded reinstatement in service either directly with the employer or through the Conciliation Officer. As stated earlier the workman himself has admitted in his cross examination that in the complaint to the Asst. Labour Commissioner he had demanded the payment of his dues. He has also admitted in his cross examination that between the period from 13-12-92 i. e. from the date of termination of his service till the date when he made the complaint to the Asst. Labour Commissioner, he did not make any other letter. Therefore, the conciliation proceedings were held by the Asst. Labour Commissioner on the basis of the complaint Exb. W-1 and subsequently failure report was submitted. Merely because the employer did not participate in the conciliation proceedings or did not reply to the complaint filed by the workman would not mean that the reference of the dispute as regards termination of service is competent. The employer has stated in his evidence that on receipt of the notice from the conciliation he asked for the copy of the complaint and on receipt of the copy, he did not attend the proceedings before the Conciliation Officer. From the suggestion which is put to the employer's witness Shri Monohar Korde in his cross examination that the workman had approached him twice to demand payment of his dues and that he did not pay to him also support the fact that the workman never raised the dispute as regards termination of his service and his reinstatement in service but his demand was for payment of his dues. Therefore, there is no evidence on record to show that the workman had raised the dispute as regards illegal termination of his service and that he had made the demand for his reinstatement in service. Such demand was not made by him directly on the employer nor through the Conciliation Officer. The failure report of the Conciliation Officer has not been produced. Even assuming that the failure report referred to the illegal termination of service of the workman and that the employer had refused to reinstate him, still the dispute would not be an industrial dispute and the reference would not be competent in view of the decision of the Supreme Court in the case of Sindhu Resettlement Corporation Ltd. (supra) and the decision of the Himachal Pradesh High Court in the case of M/s Village Papers Pvt. Ltd., (supra). In the circumstances I hold that the reference of the dispute made by the Government as regards termination of service of the workman is not competent as there was no industrial dispute at the time when the Government made the reference. In my view the reference is not maintainable and hence liable to be rejected. I, therefore answer the issue no. 4 in the affirmative.

Since while deciding the issue no. 4 it has been held by me that the reference is not maintainable and is liable to be rejected, the question of deciding the other issues or granting any relief to the workman does not arise. In the circumstances, I pass the following order.

Order

It is hereby held that there was no Industrial Dispute at the time when the Government made the reference, and hence the reference is not maintainable. The reference made by the Government is therefore rejected.

No order as to cost.

Inform the Government accordingly.

Sd/-
(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/98/12206

The following Award dated 29-10-1998 in Reference No. IT/71/98 given by the Industrial Tribunal, Panaji- Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 10th December, 1998.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/71/98

Shri Ramesh D. Mahale,
Behind K. K. Tailors,
H. No. 367, St. Inez,
Panaji Goa.

— Workman/Party I

V/s

M/s. Damodar R. C. Sancoalcar,
Near Secretariat,
Panaji Goa.

— Employer/Party II

Workman/Party I - Absent.

Employer/Party II represented by Shri A. M. Karnik.

Dated:- 29-10-98.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Government of Goa, by order No. IRM/CON/ / (44)/96/9837 dated 15th July, 1998 referred the following dispute for adjudication to this Tribunal.

(1) "Whether the action of the management of M/s Damodar R. C. Sancoalcar, Panaji Goa in terminating the services of Shri R. C. Mahale, Salesman, w.e.f. 7-3-96 is legal and justified?

If not, to what relief the workman is entitled?"

2. On receipt of the reference, a case was registered under No. IT/71/98 and registered AD notice was issued to the parties. As per the said notice, the case was fixed for filing of the Statement of Claim by the workman/ /Party I (For short "Workman") on 17-9-98 at 10.30 a.m. On the said date, though the workman was duly served with the notice, he remained absent and none appeared on his behalf. The employer/party II (For short "Employer") was duly served with the notice and was represented by Shri A. M. Karnik. Since the workman had remained absent, the case was adjourned to 12-10-98 at 10.30 a.m. for filing of the statement of claim by the workman. On this date also, none appeared on behalf of the workman and therefore, the case was again adjourned to 29-10-98 at 10.30 a.m. and last opportunity was given to the workman to file his statement of claim. However, on this date also, none appeared on behalf of the workman and consequently, no statement of claim was filed on his behalf. Shri Karnik, representing the employer submitted that he does not want to file any statement of claim/written statement on behalf of the employer. He submitted that since the workman had failed to file the statement of claim inspite of the opportunity given, the reference cannot be answered in favour of the workman.

3. In the present case, the Government made the reference of the dispute as the workman challenged the action of the employer in terminating his services and as such, he raised an industrial dispute. It is a settled law that a party who challenges the legality of the order or the action taken by the employer, the burden lies on that party to prove the illegality of the said order or the action. The Bombay High Court, Panaji Bench, in the case of V.N.S. Engineering Services V/s Industrial Tribunal, Goa, Daman & Diu and another, reported in FJR Vol. 71 at page 393 has held that there is nothing in the Industrial Disputes Act, 1947 that indicates a departure from the general rule that he who approaches a Court for a relief should prove his case i.e. the obligation to lead evidence to establish an allegation, the test being that he who does not lead evidence must fail. The Bombay High Court further held that the provisions of Rule 10-B of the Industrial Disputes (Central Rules 1957) which requires the party raising a dispute to file a statement of demands relating only to the issue in the order of reference for adjudication within 15 days from the receipt of the order of reference and forward copies to the opposite party involved, clearly

indicates that the party who raises the industrial dispute is bound to prove the contention raised by him and an Industrial Tribunal or the Labour Court would be erring in placing the burden of proof on the other party to the dispute. The same view has been taken by the Allahabad High Court in the case of V. K. Raj Industries V/s Labour Court (i) and others reported in 1981 (29) FLR 194. The High Court held that the proceedings before the Industrial Court are judicial in nature even though the Indian Evidence Act is not applicable to the proceedings before the Industrial Court, but the principles underlying the said Act are applicable. The High Court further held that it is well settled that if a party challenges the validity of an order and if no evidence is produced, the party invoking the jurisdiction must fail. The High Court further held that if the workman fails to appear or to file written statement or produce evidence, the dispute referred by the Government cannot be answered in favour of the workman and he will not be entitled to any relief. As mentioned earlier, the dispute was raised by the workman that his services were illegally terminated by the employer and it is at his instance that the reference was made by the Government to this Tribunal for adjudication. Therefore, applying the law laid down by the Bombay High Court and the Allahabad High Court in the above referred cases, the burden was on the workman to prove that the action of the employer in terminating his services w.e.f. 7-3-96 was illegal and unjustified. However, the workman in spite of having being given several opportunities did not appear and consequently, no statement of claim to be filed on his behalf. From the conduct of the workman, it is clear that the workman is not interested in proceeding further with the matter. There is therefore, no material before me to hold that the action of the employer in terminating the services of the workman is not legal and justified. In the absence of any evidence, the reference cannot be answered in favour of the workman. In the circumstances, I hold that the workman has failed to prove that the action of the employer in terminating his services w.e.f. 7-3-96 is illegal and unjustified.

Hence, I pass the following order:-

ORDER

It is hereby held that the action of the Employer M/s Damodar R. C. Sancoalcar, Panaji Goa in terminating the services of the workman Shri Ramesh D. Mahale, Salesman, w.e.f. 7-3-96 is legal and justified. It is hereby further held that the workman Shri Ramesh D. Mahale is not entitled to any reliefs.

No order as to costs.

Inform the Government accordingly.

Sd/-
(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/98/12207

The following Award dated 14-9-1998 in Reference No. IT/57/92 given by the Industrial Tribunal, Panaji- Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 10th December, 1998.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/57/92.

Shri Namdeo Kamble,
Rep. by Cidade de Goa
Hotel Employees' Union. — Workman/Party I

V/s

M/s Cidade de Goa Hotel,
Dona Paula, Goa. — Employer/Party II

Party I/Workman represented by Shri V. Sawant.

Party II/Employer represented by Adv. Shri G. K. Sardesai.

Panaji, dated: 14-9-1998.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by its Order No. 28/43/92-LAB dated 25-9-1992 referred the following dispute for adjudication by this Tribunal.

(1) "Whether the action of the management of M/s Cidade de Goa, Dona Paula, Goa, in terminating the service of Shri Namdeo Kamble, Resort Attendant, with effect from 18-4-1992 is legal and justified?

(2) If not, to what relief the workman is entitled?"

2. On receipt of the reference a case was registered under no. IT/57/92 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workman/Party I (For short, "Workman") filed his statement of claim which is at Exb. 4. The facts of the case in brief as pleaded by the

workman are that he was employed with the Employer/ Party II (for short, "Employer") as a Resort Attendant from 2-3-1990 and prior that for about one and a half year he worked as a Beach Boy. That since he was not confirmed in service he raised an industrial dispute before the Labour Commissioner and because of the raising of this dispute, the employer started harassing him. That suddenly he received a letter dated 20-4-92 from the employer stating that the employer had accepted his resignation letter and that he was relieved from service. That by letter dated 23-4-92 he informed the employer that he had never tendered any resignation and hence acceptance of his resignation did not arise. Without prejudice to the above contention he also stated that the so called resignation is not addressed to the competent authority nor it is accepted by the competent authority. That the employer informed the conciliation officer that since the workman had resigned, the dispute did not survive. That the workman informed the conciliation officer that he had filed criminal complaint with the Panaji Police Station against officers of the employer namely Shri Luis Freitas, Christopher D'Souza and Richard Pinto stating that his signature was forged by the said persons. That the conciliation proceedings in respect of the dispute as regards termination of his service ended in a failure and the conciliation officer submitted his failure report to the Government. The workman contended that termination of his services by the employer is illegal and unjustified and it amounts to retrenchment. The workman therefore claimed that he is entitled to reinstatement in service with full back wages and consequential benefits.

3. The employer filed written statement which is at Exb. 6. By way of preliminary objections the employer stated that the reference is bad in law for non application of mind on the part of the Government as the issue is as regards resignation and not legality or justification of termination of service. The employer denied that workman was harassed because he raised the dispute as regards confirmation of his service. The employer stated that on 18th April 1992 the workman approached one Mr. Christopher D'Souza and expressed his desire to resign and further requested him to record the contents of the resignation in English as spelt out by him, which he did and forwarded the same to Mr. Bhatia, the head of the House Keeping Department and by letter dated 20-4-92 the workman was communicated the acceptance of his resignation. The employer denied that the workman was prevented from attending the duty or from signing the muster roll or that he was forced to sign any papers of full and final settlements. The employer denied that the resignation letter is not addressed to the proper authority or that it is not accepted by the competent authority. The employer stated that the resignation was submitted voluntarily and it was properly and legally accepted. The employer stated that the workman filed the complaint to the police mala fide alleging that his signature on the resignation letter is forged. The employer denied the contention of the workman that the acceptance of the resignation amounts to illegal termination of his service or that it amounts to retrenchment. The employer denied

that the workman is entitled to be reinstated in service with full back wages and other consequential benefits. The workman thereafter filed rejoinder at Exb. 7.

4. On the pleadings of the parties issues were framed at Exb. 8. Since the employer had challenged the maintainability of the reference the issue no. 1 was framed as follows: "Does the Party II prove that reference is made by the Government is null and void and incompetent for reasons stated in para A (a) and A (b) of the written statement?" This issue was tried as preliminary issue. On hearing the parties on the said issue this Tribunal by order dated 12-1-95 held that the reference is competent and maintainable and as such answered the issue no. 1 in the negative. Thereafter the parties were directed to lead evidence on the other issues and the case was fixed for the evidence of the workman. On 26-3-96 the examination in chief of the workman was recorded and he was partly cross examined. The case was thereafter adjourned for further cross examination of the workman. Several opportunities were given to the workman for subjecting himself to cross examination but he did not attend the hearing and hence his cross was closed on 7-11-97 and the case was fixed for further evidence of the workman. Again several opportunities were given to the workman to lead evidence on the merits of the case but he did not do so, and therefore his evidence was closed on 20-3-98. Adv. Sardesai the learned counsel for the employer submitted that the employer did not wish to lead any evidence in the matter and therefore subsequently arguments were heard.

5. In the present case the dispute is referred by the Government at the instance of the workman since it is his case that the employer terminated his services w.e.f. 18-4-92. He raised the industrial disputes that action of the employer in terminating his service is illegal and unjustified. It is his case that he never resigned from services and that his signature on the resignation letter is forged. It is also his case that termination of his services amounts to retrenchment. The Bombay High Court, Panaji Bench in the case of V. N. S. Engg. Services V/s. Industrial Tribunal, Goa, Daman and Diu and another reported in FJR Vol. 71 at page 393 has held that there is nothing in the Industrial Disputes Act, 1947 that indicates a departure from the general rule that he who approaches a Court for a relief should prove his case i.e. the obligation to lead evidence to establish an allegation, the text being that the who does not lead evidence must fail. The High Court further held that the provisions of Rule 10-B of the Industrial Disputes (Central Rules 1957) which requires the Party raising dispute to file a statement of demands relating only to the issues in the order of reference for adjudication within 15 days from the order of reference and forward copies to the opposite parties involved, clearly indicates that the party who raises the industrial disputes is bound to prove the contention raised by him and an Industrial Tribunal or Labour Court would be erring in placing the burden of proof on the other Party to the dispute. In another case that is in the case of V. K. Raj Industries v/s Labour Court (I) and others reported in 1991

(29) FLR 194, the Allahabad High Court has held that the proceeding before the Industrial Court are judicial in nature even though the Indian Evidence Act is not applicable to the proceedings before the Industrial Court, but the principles underlying the said Act are applicable. The Allahabad High Court has further held that it is well settled that if a party challenges the validity of an order, and if no evidence is produced the party invoking the jurisdiction must fail. The High Court has also held that if the workman fails to appear or to file written statement or to produce evidence, the disputes referred by the Government cannot be answered in favour of the workman and he will not be entitled to any relief.

6. In the present case since the dispute was raised by the workman and at his instance that the Government made the present reference, as per the principles laid down by the Bombay High Court and Allahabad High Court in the above referred cases, the burden was on the workman to prove that the action of the employer in terminating his services w.e.f. 18-4-92 is illegal and unjustified. However, the workman in spite of having been given several opportunities to lead evidence did not do so. His deposition which is partly recorded has to be discarded as he did not offer himself for cross examination. His deposition therefore is of no value. Therefore there is no material before me to hold that the action of the employer in terminating his services is not legal and justified. No evidence has been led by the workman to prove that his signature on the resignation letter was forged or that the said resignation letter was not addressed to the competent authority or that it was not accepted by the competent authority or that the termination of his services amounted to retrenchment. In the absence of evidence the reference cannot be answered in favour of the workman.

In the circumstances I hold that the workman, has failed to prove that the action of the employer in terminating his services w.e.f. 18-4-92 is not legal and justified. Hence, I pass the following order.

Order

It is hereby held that the action of the employer M/s Cidade de Goa, Dona Paula, Goa in terminating the services of the workman w.e.f., 18-4-1992 is legal and justified. It is further held that the workman is not entitled to any relief.

No order as to costs.

Inform the Government accordingly.

Sd/-
(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

Order

No. CI/Pub-Awards/98/12211

The following Award dated 17-9-1998 in Reference No. IT/15/95 given by the Industrial Tribunal, Panaji-Goa,

is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary (Labour).

Panaji, 10th December, 1998.

IN THE INDUSTRIAL TRIBUNAL

GOVERNMENT OF GOA

AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

No. IT/15/95

Shri Yamunappa C. Gaudar
Nityanand Bhawan, Mangor Hill
Vasco da Gama, Goa.

— Workman/Party I

V/s

The Chairman,
Mormugao Port Trust,
Mormugao Harbour, Goa.

— Employer/Party II

Workman/Party I represented by Shri Subhas Naik.

Employer/Party II represented by Adv. Shri L. V. Talaulikar.

Panaji, dated: 17-9-1998.

AWARD

In exercise of the powers conferred by clause (d) of Sub-Section (1) of Section 2 (A) of Section 10 of the Industrial Disputes Act, 1947, the Central Government by order dated 10-2-95 bearing No. L-36012/1/94 referred the following dispute for adjudication by this Tribunal.

"Whether the action of the Chairman, Mormugao Port Trust, Goa, in terminating the services of Shri Yamunappa Goudar, Ex-Seaman, w.e.f., 17-1-93 is justified? If not, to what relief the workman is entitled?

2. On receipt of the reference, a case was registered under No. IT/15/95 and registered A/D notice was issued to the parties. The Workman/Party I (for short, "Workman") filed his statement of claim which is at Exb.4. The facts of the case in brief as pleaded by the workman are that he was employed with the Employer/Party II (for short, "Employer") as a Seaman since 14th March 1987 and was working in the marine Department. That on 28th July 1992, he was issued a charge sheet alleging that he remained absent from 20th May 1992 to 18th June 1992. That prior to the issuing of the charge sheet, he was issued a memo dated 1st June 1992 to which the workman replied by reply dated 7th July 1992. That the workman could not

attend to his duties from 20th May 1992 to 13th June, 1992 because he was sick and he was suffering from Jaundice. That he reported for work on 15th June 1992 and submitted Medical certificate, but he was not allowed to report at that time but was allowed to report for work on 19th June 1992. That domestic enquiry was held on 15th October 1992 into the charge sheet issued to him and the workman took Union Representative, Mr. Sandeep Desai alongwith him to represent him as he did not know English. However, the Inquiry Officer did not allow him to do so and also told him that if he apologised for the incident no serious action would be taken against him. That the workman told the Inquiry Officer all the facts about his absence and the Inquiry Officer thereafter wrote the enquiry proceedings in his own hand and gave it for typing and then asked the workman to sign which he did. That he was not explained the contents of the enquiry proceedings. That thereafter, the workman received a memo dated 30th October 1992 from the employer seeking to impose punishment that of removing him from service, and alongwith the said memo, the report of the Inquiry Officer was enclosed. That the workman replied to the said memo representing against the punishment proposed by the employer. That thereafter, the employer by order dated 7th January 1993 terminated the services of the workman and on receipt of the said order, the workman by letter dated 22nd July 1993 requested the employer to reinstate him back in service with full back wages. That since the employer did not take any action on his request, the workman raised industrial dispute before the Asst. Labour Commissioner, Vasco, by letter dated 12th January 1994. That since no settlement could be arrived at, the Conciliation ended in a failure. That in the meantime the workman had preferred appeal against the order of termination, but the same was dismissed by the Chairman. The workman contended that the enquiry held against him was in violation of principles of natural justice and the report submitted by the Enquiry Officer was perverse being not based on the evidence on record. The workman contended that the charges levelled against him in the charge sheet were not proved in the enquiry. The workman also contended that the punishment awarded to him by the employer was disproportionate. The workman further contended that since the charges were not proved, termination of his services by the employer is illegal and unjustified and hence he is entitled to reinstatement in service with full back wages.

3. The employer filed the written statement which is at Exb.6. The employer stated that the workman was very irregular in attending his duties and he was remaining habitually absent without prior intimation and he had also no leave to his credit. The employer stated that the total leave or absence or otherwise availed by the workman for the period from 1-4-88 till 24-7-92 was in aggregate of 471 days comprising of 115 days of earned leave, 39 days as commuted leave, 142 days on production of medical certificate and 175 days as further extraordinary-leave without production of medical certificates. That several memos were issued to the workman with regard to his habitual unauthorised absence and since there was no improvement, the last memo dated 1-6-92

was issued to him, informing him that he had remained absent unauthorisedly from 20-5-92 causing lot of difficulties and dislocation of normal operational work of Port Administration. The employer stated that as there was no positive response from the workman, the employer was constrained to issue charge sheet to him. The employer stated that the domestic enquiry was conducted on 15-10-92 and when the said enquiry was in progress, the workman voluntarily admitted the charges framed against him and tendered apology. The employer denied that the domestic enquiry was held in violation of the principles of natural justice or that the findings of the inquiry officer were perverse. The employer admitted that one Shri Sandeep Desai had accompanied the workman on the date of the enquiry, but denied that the workman was told by the Inquiry Officer that if he admitted the charges, no serious action would be held against him. The employer also denied that the workman did not know English or that the contents of the enquiry proceedings were not explained to him. The employer stated that the workman could not be allowed to resume his duties on the strength of the Private Doctor's certificate until he was declared fit by the medical department of the employer. The employer denied that charges levelled against the workman were not proved in the enquiry or that the termination of the services of the workman is legal and unjustified as claimed by the workman. The employer stated that the workman is not entitled to any relief as claimed by him and reference is liable to be rejected. Thereafter the workman filed rejoinder which is at Exb. 7.

4. On the pleading of the parties, following issues were framed.

1. Whether the Party I proves that the domestic enquiry held against him is not fair, proper and impartial?

2. Whether Party I proves that the charge levelled against him in the charge sheet dated 20-7-92 are not misconduct?

3. Whether the charges of misconduct levelled against the Party I are proved to the satisfaction of the Tribunal by acceptable evidence?

4. Whether the Party I proves that the action of the Party II in terminating his services w.e.f. 17-1-93 is illegal and unjustified?

5. Whether the Party I is entitled to any relief?

6. What Award?

5. Since the issue No. 1 was pertaining to the fairness of the enquiry, it was treated as preliminary issue and the parties led evidence on the said issue. By order dated 21-2-1997 this tribunal decided the preliminary issue no. 1 holding that the domestic enquiry held against the workman as not fair, proper and impartial and hence the enquiry was set aside. Thereafter the employer filed an application dated 10-6-97 at Exb. 17 praying that the

employer be permitted to adduce evidence before this Tribunal to support and justify the action of termination of the services of the workman. The contention of the employer was that after the enquiry is set aside opportunity has to be given to the employer to lead evidence before the Tribunal to prove the charges against the workman. The said application was objected by the workman and after hearing the parties this Tribunal by order dated 18-11-97 dismissed the said application of the employer holding that the said application was filed by the employer after the proceedings on the preliminary issue was closed, which is not permissible under the law.

6. In the circumstances, my findings on the remaining issues are as follows:

Issue No. 2: Does not arise.

Issue No. 3: Does not arise.

Issue No. 4: In the affirmative.

Issue No. 5: As per para. 9 below.

Issue No. 6: As per order below.

REASONS

7. *Issue Nos. 2 and 3:* Issue no. 2 is on the point whether the charges levelled against the workman in the charge sheet dated 20-7-92 are misconduct. This issue was framed because workman had contended that the charges levelled against him in the said charge sheet do not constitute misconduct. The issue no. 3 is on the point whether the charges of misconduct are proved against the workman by acceptable evidence. This issue was framed because the workman had contended that the findings of the enquiry officer are perverse as they are not based on the evidence on record in the enquiry. The question of giving findings on the said issues does not arise because the enquiry itself is set aside. The findings would have required to be given only if it was held by this Tribunal that the enquiry conducted against the workman is fair proper and impartial as only then the Tribunal would have been required to go into the fact whether the charges levelled against the workman are misconduct and if so whether the said charges are proved in the enquiry. Besides, no evidence has been led by the employer before this tribunal in support of the charges. In the present case the enquiry is set aside and consequently the findings of the enquiry officer also stand set aside. In the circumstances giving findings on the issue nos. 2 and 3 does not arise and I hold so accordingly.

8. *Issue No. 4:* This issue pertains to whether the action of the employer in terminating the services of the workman w.e.f. 17-1-93 is illegal and unjustified. The employer terminated the services of the workman on the ground that he had committed misconduct and the charges of misconduct were proved in the enquiry conducted against him, as per the findings of the Inquiry Officer. As

I have mentioned earlier the enquiry was set aside by this Tribunal by order dated 21-2-1997 and consequently the findings of the Inquiry Officer also stood set aside. Initially the employer had not sought permission to lead evidence before this Tribunal in support of the charges in case the enquiry was set aside and the subsequent application filed by the employer for permission to lead evidence was dismissed by order dated 18-11-97 for the reasons stated in the said order. Consequently there is no evidence from the employer to prove the charges levelled against the workman in the charge sheet dated 28th July 1992 which were to the effect that he had remained absent from 20th May 1992 to 18th June 1992 and that on earlier occasion also he had remained unauthorisedly absent for which he was warned. The services of the workman were terminated based on the above said charges. Now since the charges themselves are not proved the termination of services of the workman becomes illegal and unjustified. I therefore hold that the workman has succeeded in proving that the action of the employer in terminating his services w.e.f. 17-1-93 is illegal and unjustified. I therefore answer the issue no. 4 in the affirmative.

9. *Issue No. 5:* This issue pertains to as to what relief should be granted to the workman. It is a settled law that once termination is held to be illegal and unjustified, the normal rule is that the workman is entitled to reinstatement in services with full back wages. Adv. Shri Talaulikar, the learned counsel for the employer has submitted that back wages should not be granted to the workman because his past conduct was not good. He has relied upon the decision of the Supreme Court in the case of U. P. Co-operative Federation Ltd. v/s Ram Singh Yadav and others, reported in 1998 SCC (L&S) 548. I do not agree with the contention of Adv. Shri Talaulikar that back wages should not be granted to the workman because his past conduct was not good. In the first place there is no evidence on record as regards the past conduct of the workman though there is reference to it in the charge sheet. As I have stated earlier the charges of misconduct levelled in the charge sheet have not been proved against the workman. Secondly, the question of considering the past conduct of the workman for the purpose of awarding punishment to him would have arisen if the charges of misconduct were proved against the workman. In the present case since the misconduct is not proved against the workman the question of considering the past conduct of the workman does not arise. I have gone through the decision of the Supreme Court in the case U. P. Coop. Federation Ltd. (supra) relied upon by Adv. Shri Talaulikar. This decision is not applicable to the facts in the present case. In the said case the services of the employee was terminated on the ground that he had abandoned his service. The Allahabad High Court set aside the order of termination on the ground that no disciplinary proceedings were initiated against the employee before terminating his services. In appeal before the Supreme Court, the order of the High Court was upheld. The employee was ordered to be reinstated but he was not granted any pay and allowances for the period from 21-7-77 till order of the High Court dated 3-7-89 because admittedly he had not worked for the said

period. Pay and allowances were not granted to the employee by the Supreme Court for the above said period because the employee was at fault in not joining his new posting without any valid reason. It was a case of transfer. Therefore the facts in the said case cannot be made applicable to the present case. In the present case since the services of the workman were terminated, there was no question of his reporting for work after termination of his service. In the circumstances, I do not find any substance in the submission of Adv. Shri Talaulikar that the workman should not be granted back wages on the ground stated by him. There is also no evidence on record to show that the workman was in gainful employment after termination of his services. It is therefore just and proper to award reinstatement to the workman with full back wages. I, therefore, hold that the workman is entitled to reinstatement in service with full back wages and other consequential benefits.

In the circumstances, I pass the following order.

ORDER

It is hereby held that the action of the Chairman, Mormugao Port Trust, Goa, in terminating the services of workman Shri Yemunappa C. Gaudar, Ex-Seaman with effect from 17-1-1993 is illegal and unjustified. The workman Shri Yemunappa C. Gaudar is ordered to be reinstated in service with full back wages and other consequential benefits.

No order as to costs.

Inform the Government accordingly.

Sd/-
(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.

Order

No. CL/Pub-Awards/98/12212

The following Award dated 17-9-1998 in reference No. IT/54/97 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Ex-Officio Joint Secretary, (Labour).

Panaji, 10th December, 1998.

IN THE INDUSTRIAL TRIBUNAL
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

No. IT/54/97

Shri Devidas Zalmi,
Rep. by Goa Trade &
Commercial Workers Union
Panaji-Goa. — Workman/Party I

V/s

M/s Super Services (Cleaning)
Contractor to
M/s Hindustan Ciba Geigy Ltd.,
Corlim, Goa. — Employer/Party II

Party I-Workman represented by Adv. Shri R. Mangueshkar.

Party II-Employer represented by Adv. Shri G. K. Sardesai.

Panaji, dated: 17-9-1998.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Government of Goa by order No. IRM/CON/(80)94/4312 dated 14th August 1997 has referred the following dispute for adjudication by this Tribunal.

(1) Whether the action of the management of M/s Super Services (Cleaning), Contractor of M/s Hindustan Ciba Geigy Ltd., Corlim-Goa, in terminating the services of Shri Devidas Zalmi, Sweeper, with effect from 18-8-1993 is legal and justified?

(2) If not, to what relief the workman is entitled?

2. On receipt of the reference a case was registered under No. IT/54/97 and registered A/D notice was issued to the parties. In pursuance to the notice the parties put in their appearance. The Union/party I (for short, "Union") was represented by Adv. Shri R. Mangueshkar and the employer/Party II (for short, "Employer") was represented by Adv. Shri G. K. Sardesai. The Union sought time on several occasions to file statement of claim on behalf of the workman Shri Devidas Zalmi. In spite of the opportunities given no statement of claim was filed by the Union. Adv. G. K. Sardesai, the learned counsel for the Employer submitted that the employer does not wish to file any statement of claim/written statement on their behalf. Adv. Shri Sardesai submitted that since no statement of claim has been filed by the Union and since there is no evidence to prove that termination of service of the workman is illegal and unjustified, the reference cannot be answered in favour of the Union/Workman.

3. In the present case the reference of the dispute has been made by the Government at the instance of the Union as it challenged the action of the employer in terminating the services of the workman Shri Devidas Zalmi w.e.f. 18-8-93. The Bombay High Court in the case of V.N.S. Engineering Services v/s Industrial Tribunal, Goa, Daman and Diu and another, reported in FJR Vol. 71 at page 393 has held that the general rule is that he who approaches a court for a relief must prove his case, the test being that he who does lead evidence must fail and there is nothing in the Industrial Disputes Act, 1947 which indicates a departure from this general rule. The High Court further held that Rule 10-B of the I.D. Act (Central) Rules, 1947 which requires a party raising a dispute to file his statement of demands relating only to the issue in the order of reference for adjudication within 15 days from the receipt of the order of reference and forward copies to the opposite parties involved, clearly indicates that the party who raised the dispute is bound to prove the contentions raised by him and an Industrial Tribunal or the Labour Court be erring in placing the burden of proof on the other party to the dispute. In another case, i.e. in the case of V. K. Raj Industries v/s Labour Court (I) and another reported in 1981 (29) FLR 194, the Allahabad High Court has held that the proceedings before the Industrial Court are judicial in nature even though the Indian Evidence Act is not applicable to the proceedings before the Industrial Court, but, the principles underlying the said Act, are applicable. The High Court held that it is well settled that if the party challenges the validity of an order and if no evidence is produced, the party invoking the jurisdiction must fail. The High Court further held that if the workman fails to appear or to file written statement or produce evidence, the dispute referred by the Government cannot be answered in favour of the workman and he will not be entitled to any relief.

4. The above decision of the Bombay High Court in the case of V. N. S. Engineering Services (supra) and that of the Allahabad High Court in the case of V. K. Raj Industries

(supra) squarely apply to the facts in the present case. The union had raised the dispute as regards the termination of the services of the workman Shri Devidas Zalmi. The contention of the Union was that action of the employer in terminating the services of the workman is illegal and unjustified. The Union was given several opportunities to file the statement of claim, but the Union did not avail of this opportunity. Consequently, no statement of claim came to be filed on behalf of the union in support of its contention that termination of services of the workman is illegal and unjustified. Therefore there is no material before me to hold that the action of the employer in terminating the services of the workman Shri Devidas Zalmi is illegal and unjustified. In the absence of any evidence the reference cannot be answered in favour of the workman/union. In the circumstances, I hold that the union has failed to prove that the termination of services of the workman by the employer w.e.f. 18-8-93 is illegal and unjustified.

Hence, I pass the following order.

Order

It is hereby held that the action of the management of M/s Super Services (Cleaning), Contractor to M/s Hindustan Ciba Geigy Ltd., Corlim, Goa, in terminating the services of the workman Shri Devidas Zalmi, Sweeper, w.e.f., 18-8-1993 is legal and justified. It is hereby further held that the workman Shri Devidas Zalmi is not entitled to any relief.

No order as to cost.

Inform the Government accordingly.

Sd/-
(AJIT J. AGNI),
Presiding Officer,
Industrial Tribunal.